IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.443 OF 2005.

The Regional Director,
Employees' State Insurance
Corporation, Mumbai. : Appellants.

versus

Raheja Centre Premises Co-op.
Society Ltd. : Respondent.

Mr.H.V.Mehta for the appellants.
Mr.S.C.Naidu i/by M/s.C.R.Naidu & Co. for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 7th June 2005.

ORAL ORDER

1. Heard Mr.Mehta for the appellants and Mr.Naidu for the respondent. The appellants/ESI Corporation challenges the order of the Employees' Insurance Court, Mumbai dated

8.10.2004. By this order the attempt of the appellants to cover the respondents/society under the provisions of ESI Act was frustrated by the Court.

2. At the out set the counsel for the respondent relied upon the judgment of the Single Judge reported in **F.A.508 of 1990 dated 16.3.1995 [ESI Corporation v/s. Adhyaru Industrial Premises Co-op. Society Ltd.]** wherein similar question was raised. But the Court relying upon the judgment of the Kerala High Court held that the society was not engaged in any commercial activity, it was operating on no profit no loss basis and, it was formed to look after the interests of its members and the only source of its income was the contributions collected from its members. This judgment was subsequently upheld by the Division Bench (consisting of the then Chief Justice M.B.Shah and Justice A.V.Savant) in **Letters Patent Appeal (Stamp) No.12742 of 1995 by judgment dated 19.1.1996.** Thirdly, the counsel for the respondents also relied upon the judgment of this Court reported in **1995 I CLR 446 [Dainik Deshdoot & ors v. The Employees' State Insurance Corporation & ors].**

in which it is held that no second appeal would lie in the matter unless it involves substantial question of law. The counsel for the respondents rightly contended that if any question of law is involved in this appeal, the same is already decided by the aforesaid judgment of the Single Judge. The facts are identical.

3. In view of the aforesaid judgment relied upon by the counsel for the respondents and in view of the judgment of the Division Bench upholding the judgment of Single Judge in FA 508/90, there is no merits in this appeal. It is dismissed.

[D.G.DESHPANDE]

07/06/2005 JUDGE.